

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

UNITED STATES <i>ex rel.</i>)	
)	
ZOJO SOLUTIONS, INC.,)	
)	
Plaintiff,)	
)	Case No. 1:10-cv-00881
v.)	
)	Judge John F. Grady
LEVITON MANUFACTURING CO., INC.,)	
)	
Defendant.)	

**NOTICE OF WITHDRAWAL OF DEFENDANT’S MOTION
TO DISMISS PURSUANT TO RULE 12(B)(1)**

Defendant Leviton Manufacturing Co., Inc. (“Leviton”) submits this Notice of Withdrawal of “Defendant’s Motion to Dismiss Pursuant to Rule 12(b)(1)” (DKT No. 14) and states:

1. Docket No. 14 in this action is Leviton’s motion to dismiss the action based on the relator, Zojo Solutions, Inc. (“Zojo”), not have standing under Article III of the U.S. Constitution.
2. On August 31, 2010 a panel of the United States Court of Appeals for the Federal Circuit issued its opinion in *Stauffer v. Brooks Brothers, Inc.*, Nos. 2009-1428, -1430, -1453. That panel reversed a District Court ruling that the *qui tam* relator in that case, Stauffer, did not have standing under Article III of the U.S. Constitution to bring a case under the False Marking Statute, 35 U.S.C. § 292.
3. It is the view of Leviton that Zojo does not have Article III standing and that the issue of the scope and existence of standing for *qui tam* relators will be further clarified or

modified in an *en banc* proceeding at the Federal Circuit, on appeal, in a subsequent proceeding, and/or by legislative action.

4. Nevertheless, in order to avoid undue delay and to promote efficiency, Leviton is withdrawing “Defendant’s Motion to Dismiss Pursuant to Rule 12(b)(1)” without prejudice to its ability to refile the motion or to assert a standing defense as appropriate should the law support such a motion or defense.

5. “Defendants Motion to Dismiss Pursuant to Rule 9(b) and 12(b)(6)” (DKT. No. 20) and “Defendant’s Motion to Transfer Venue Under 28 U.S.C. § 1404(a)” (DKT. No. 10) are still pending and not affected by this notice.

Wherefore, Leviton withdraws “Defendant’s Motion to Dismiss Pursuant to Rule 12(b)(1)” (DKT No. 14) without prejudice.

Dated: September 8, 2010

Respectfully submitted,

By: /s/ Gregory S. Norrod
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Attorneys for Defendant
LEVITON MANUFACTURING CO., INC.

CERTIFICATE OF SERVICE

I, Gregory S. Norrod, an attorney, certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system on September 8, 2010, which will send notification and service of such filing to all counsel of record.

/s/ Gregory S. Norrod